

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 01-244
(Judge Charles W. Cope)

Case No. SC01-2670

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SPECIAL COUNSEL'S MOTION TO QUASH

AND TO EXCLUDE INVESTIGATOR'S REPORT

The Special Counsel hereby moves to quash the subpoena issued by Judge Cope's attorney to Robert W. Butler and to exclude from evidence the report prepared by Mr. Butler before the Notice of Formal Charges were filed and in support thereof states:

1. On January 16, 2002, Judge Cope served an emergency motion to compel production of a report by Robert W. Butler, the investigator retained by the Investigative Panel prior to the filing of the notice of formal proceedings. The subject report related to an interview with Nina Jeanes, a witness in this case.

2. The Special Counsel filed a response with a memorandum of authorities explaining why the report was protected from disclosure both by the Florida Constitution and by the work product protections. A copy of this memorandum is attached hereto as **Exhibit A**, and is incorporated herein.

3. On January 29, 2002, the Chair denied the motion to compel ruling that the report need not be produced.

4. Nonetheless, on information and belief, Judge Cope's counsel either has or is about to issue a subpoena to Mr. Butler requiring him to appear and testify. Moreover, Judge Cope untimely amended his witness and exhibit lists to list Mr. Butler as a witness and his

report as an exhibit.

5. For the same reasons that led the Chair to deny Judge Cope's motion to compel, the subpoena should be quashed and the report excluded.

WHEREFORE, the Chair should quash the subpoena of Robert W. Butler and exclude the report prepared by Mr. Butler from evidence at the final hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this 19th day of June, 2002.

By:
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